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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 3rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 3 August 1993, at 3 p.m.

Chairman: Mr. AL-KHASAWNEH

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The meeting was called to order at 3.15 p.m.

ELIMINATION OF RACIAL DISCRIMINATION:

(a) MEASURES TO COMBAT RACISM AND RACIAL DISCRIMINATION AND THE ROLE OF THE SUB-COMMISSION (agenda item 5) (continued)

1. Ms. CHAVEZ said that Sub-Commission members would be failing in their duty if they did not protest energetically against the partition of Bosnia and Herzegovina currently being proposed and reject the very idea of creating autonomous States based on purely ethnic and religious criteria. There could be no justification for the failure of the United States and Europe to react to the massive violations of human rights which were being committed in Bosnia and Herzegovina. If the Sub-Commission wished to fulfil its responsibilities, it must make known its opposition to the plan to partition Bosnia. She would support any proposal which Mr. Eide or other Sub-Commission members might make to that effect.

2. Mr. GUISSE pointed out that the Sub-Commission's mandate was to prevent discrimination, whether based on race, religion or ethnic origin. It was clear that the events in Bosnia and Herzegovina came within the Sub-Commission's competence, since the rights of the population of that territory were being violated simply because they were Muslims. The Sub-Commission must appeal to the international community to react promptly to that situation and save the Muslims of Bosnia and Herzegovina. It had to appeal to the conscience of humanity to stop these violations.

3. Mr. JOINET acknowledged that, as other experts had pointed out, the Sub-Commission's agenda did not always take the latest events into account. He noted, however, that the situation in Bosnia and Herzegovina did throw light on the problem of racial discrimination with which the Sub-Commission dealt. What could it do about Bosnia and Herzegovina beyond what had been done by other United Nations bodies? Firstly, it could reaffirm certain principles. Ethnic cleansing was not a phenomenon specific to the former Yugoslavia and moreover, the General Assembly, without explicitly referring to that country, had already condemned that practice in resolutions 46/242 and 47/80, which should be distributed to all Sub-Commission members. Indeed, there was a great risk of seeing that phenomenon develop in other regions of the world too. The press was constantly reporting incidents in other countries which could be described as ethnic cleansing operations. Someone who wanted to dissuade a population from staying in a given geographical area talked of partitioning the territory; that was a passive way of modifying the demographic composition of a region, the active form being to expel the inhabitants outright in order to establish another community there, as was happening in certain countries.

4. While, therefore, the Sub-Commission must concern itself with that practice in Bosnia and Herzegovina, it must also raise the alarm with regard to similar situations elsewhere in the world.

5. Mr. BOSSUYT said that the extraordinary complexity of the situation in Bosnia and Herzegovina, where different religious and ethnic communities had previously lived in complete harmony, had to be emphasized. The complicated

and troubled history of the former Yugoslavia explained in part how such massive and flagrant violations of human rights could have been committed there, but the international community too was to some extent responsible because of its failure to react appropriately to the changes which had taken place in the world in general and in Europe especially in recent years. In particular, it had underestimated the strength of the nationalist sentiments which had always been repressed in Yugoslavia under the dictatorial regime and had exploded when democracy had been re-established in that country. The leaders of the international community had for too long insisted on the necessity of maintaining the unity of the Yugoslav State, when a better knowledge of the history of the country and its peoples would have brought the realization that that was impossible. That was why the international community had for a long time supported the action of the Yugoslav federal army, which in fact had served the interests of only one of the peoples of the former Yugoslavia. The recognition of Croatia, and above all of Slovenia, had certainly not been premature in so far as both those countries fulfilled all the conditions for admission to membership of the United Nations. Nevertheless, it was sometimes dangerous to recognize a State whose Government was unable to exercise power effectively in its territory. Alternatively, it had to be given the support which would enable it to do so, or at least the means to defend itself against any aggression by a neighbouring State.

6. The international community had reacted too slowly to the new international political situation, and some armed groups thought that they could act with impunity since the international community lacked the courage to intervene. That situation posed a serious threat, not only to human rights but also to world stability. That was why the Sub-Commission's first task in respect of the new item to be included in its agenda would be to try to define more clearly the different concepts of humanitarian aid, intervention and interference, the mixing up of those concepts being responsible both for inaction and for dubious actions undertaken with apparently worthy motives. The current negotiations in Geneva between the parties to the conflict in the former Yugoslavia were moving towards an outcome which too closely resembled a diktat imposed by the strong on the weak, in defiance of the principles of international law and human rights. Independent experts could not endorse such a settlement.

7. Mr. TIAN JIN, agreeing with previous speakers, said it was clear that there would be no conflicts between peoples if each respected the religion, culture or language of the other. Equally, if States could live in peaceful coexistence, based on respect for the principle of national sovereignty, there would be no armed conflicts.

8. As Mr. Bossuyt had said, the case of Bosnia and Herzegovina was extremely complicated because of the history of the former Yugoslavia and all that had happened before, during and after the Second World War and in recent years. The situation was being made still worse by numerous ethnic and religious problems and by the attitude of the leaders of the different communities, who were paying no heed to the interests of the people but were engaged purely and simply in a struggle for power. In addition, there were negative external factors, in particular geopolitical and ideological considerations, as well as the divergent interests of the great Powers. The conflicts which had broken out in Somalia or in the former Soviet Union were also due to various external

and internal factors, and there was no doubt that the action or inaction of the United Nations in that respect would be a good subject for a thesis by future history students. In any event, it was clear that splitting a country artificially or by force could not be a long-term solution.

9. The Sub-Commission had an obligation to condemn the human rights violations committed in Bosnia and Herzegovina by all sides in the conflict. It should also call upon the leaders of the different groups to respect human rights and demand that those leaders and any other individuals who were guilty of serious violations should be punished.

10. Mr. BOUTKEVITCH pointed out that, at its 1992 session, the Sub-Commission had spent a great deal of time asking itself whether various international problems came within its competence. Often, those were purely questions of form, and the time spent answering them had meant that the Sub-Commission had had to hold evening meetings. In the case at hand, the question of whether or not the situation in Bosnia and Herzegovina came within the Sub-Commission's competence had been raised. Once again, that was purely a question of form: all the experts knew full well that human rights had been, and were still being, flouted in Bosnia and Herzegovina. It would therefore be absurd for the Sub-Commission not to speak out on that issue.

11. The situation in Bosnia and Herzegovina, in Somalia or in the former Soviet Union was multifaceted. It was not, however, the Sub-Commission's task to try to analyse the situation in its entirety. The Sub-Commission was made up of the most eminent specialists in international law, and it should try to reach conclusions concerning the legal aspects of precise problems. That would increase its credibility and would allow it to contribute to the search for effective solutions to those problems.

12. Mr. EIDE agreed with Mr. Joinet that it would be useful if the secretariat compiled a dossier on the issue, including all relevant resolutions of the General Assembly, the Security Council and the Commission on Human Rights. The Sub-Commission could use that as a basis for consultations in order to react very promptly. Negotiations were under way on Bosnia and Herzegovina, and it was imperative that the Commission should react in time.

13. The CHAIRMAN said that the secretariat would prepare the dossier mentioned.

14. Mrs. WARZAZI considered that, as far as that dossier was concerned, the Sub-Commission needed only the operative part of resolutions and that it would not be necessary to include the preamble.

15. Ms. PALLEY said it was her understanding that all Member States were parties to the Convention on the Prevention and Punishment of the Crime of Genocide. Therefore, they had only to implement the mechanisms envisaged in that instrument. In that way, all those committing genocide - whether rulers, public officials, or private individuals - ran the risk of being punished.

16. Mr. JOINET, disagreeing with Mrs. Warzazi, said that the preamble of resolutions was of interest to the members of the Sub-Commission, since it

often threw light on the operative part or allowed difficulties of interpretation to be avoided. Moreover, if the Sub-Commission was to take action on ethnic cleansing and related practices, its members would have to be able to consult both resolutions on humanitarian aid and General Assembly resolutions on ethnic cleansing in general.

17. Mrs. WARZAZI asked that the secretariat should also make available to the Sub-Commission the Security Council resolution recommending that the General Assembly should accept Bosnia and Herzegovina's application for membership of the United Nations.

18. Mr. MAXIM said he also considered that the Sub-Commission was obliged to react promptly, particularly since negotiations, in which the future of Bosnia and Herzegovina was at stake, were under way. It was essential for the negotiators to know that, even if they agreed upon the creation of States on an ethnic basis, their decision would be consistent neither with the principles upheld by the Sub-Commission, nor with international law. The negotiators would thus be given a warning, which might well open their eyes.

19. Mr. EIDE pointed out that two procedures were possible. Firstly, the Chairman could make a statement formulated by consensus among Sub-Commission members which would be transmitted to the negotiators through the two co-Chairmen of the Conference on the Former Yugoslavia; secondly, the Sub-Commission could adopt a decision or a recommendation, in which case it should follow the usual procedure.

20. The CHAIRMAN stated that these two solutions were not mutually exclusive. He could transmit the text of a statement by the Sub-Commission to the negotiators and the Sub-Commission could later adopt a decision or a recommendation following the usual procedure.

21. If there were no objections, he would take it that the Sub-Commission wished to transmit to the negotiators of the Conference on the Former Yugoslavia the text of a statement to be agreed upon subsequently.

22. It was so decided.

The meeting rose at 4.05 p.m.